



# The Attorney General of Texas

April 23, 1981

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Mr. W. O. Shultz, II  
University of Texas System  
Office of the General Counsel  
201 West 7th Street  
Austin, Texas 78701

Open Records Decision No. 269

Re: Whether documents relating  
to an employee's resignation are  
public under Open Records Act

Dear Mr. Shultz:

You request our decision pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act. The University of Texas Health Science Center at Dallas (hereinafter Dallas Center) and the Associate Comptroller of the University of Texas System have received a request for information relating to the resignation of an employee of the Dallas Center.

The request is for "any documents relating to the resignation of" the named individual, a written agreement between the individual and the Dallas Center, a promissory note executed by the individual, documents reflecting payments on the note, and any information or documents referring in any way to the resignation, agreement, and/or note. It is the position of the University of Texas System that all of the information requested are "personnel records" and that disclosure would constitute a "clearly unwarranted invasion of personal privacy" so as to bring the records within the exception of section 3(a)(1) or 3(a)(2) of the Texas Open Records Act. Section 3(a)(1) excepts "information deemed confidential by law" and protects from required disclosure information relating to matters within the constitutional right of privacy or the common law tort right of privacy as recognized in judicial decisions. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976). Section 3(a)(2) excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ."

Part of the information submitted with your request for our opinion is a report of an investigation and audit of University funds of a division of the Dallas Center. Information concerning such an investigation and audit would not normally be characterized as "information in personnel files" within the ordinary meaning of that phrase. We have recently said that the scope of this phrase in the section 3(a)(2) exception for purposes of shielding information from public inspection is not necessarily coextensive with the broad scope the phrase has been given when the question is whether the

employee has a right of access to information about his employment relationship under the proviso of this exception. Open Records Decision No. 230 (1979). However, in this instance, we do not believe that a different result would be reached whether the privacy interests asserted are considered under 3(a)(1) or 3(a)(2), thus we will assume that all of the information is properly characterized as "information in personnel files."

The application of the section 3(a)(2) exception depends on two additional factors — an invasion of personal privacy and a finding that the invasion is clearly unwarranted. Open Records Decision No. 223 (1979). This exception was designed to protect against disclosure of intimate details of a highly personal nature. Open Records Decision Nos. 224 (1979), 168 (1977). This exception has been applied by this office to permit withholding of information from the public concerning the circumstances involved in termination of employment. See Open Records Decision Nos. 133, 119 (1976); 106, 93, 91, 68, 60 (1975). However, even though some privacy interest ordinarily exists concerning the termination of employment, we do not believe that any invasion of that privacy interest can be determined to be clearly unwarranted here. Most of the information involved relates to the handling of public funds. This office has previously recognized the public's substantial concern with the financial affairs of governmental bodies. Open Records Decision No. 151 (1977). The public policy in this regard is clearly expressed in section 6 of the Act, which provides in part:

Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by, governmental bodies upon completion;

....

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law. . . .

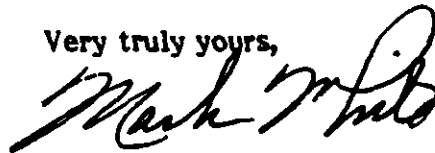
This office has held that information in a bank account opened by a city employee in the name of the city, and obtained by the city in an investigation of allegations of possible criminal conduct, was public as against a contention that the privacy of the individual whose conduct was investigated might be invaded. Open Records Decision No. 220 (1978). It was also held that a report of a special audit into purchasing procedures and practices of a school district was public and not excepted under section 3(a)(1) on the basis of a privacy interest in avoiding embarrassment which might arise by implication from the way in which government business is conducted. Open Records Decision No. 219 (1978). Generally, this office has held audit reports to be public. Open Records Decision Nos. 213 (1978); 178, 163, 160 (1977). Terms of final settlement agreements have specifically been held to be public. Open Records Decision No. 114 (1975).

The public has a substantial interest in knowing whether their public servants are carrying out their duties in an efficient and law-abiding manner. See Columbia Packing Co. v. United States Department of Agriculture, 417 F. Supp. 651, 655 (D. Mass. 1976), aff'd, 563 F.2d 495 (1st Cir. 1977); Campbell v. United States Civil Service Comm'n, 539 F.2d 58, 62 (10th Cir. 1976); Attorney General v. Collector of Lynn, 385 N.E.2d 505 (Mass. 1979). We believe this interest is particularly strong in matters involving the handling of public funds, and in this instance, that it prevails over the former employee's privacy interest in the matter.

In reference to the claim that the information is excepted under 3(a)(1) on the basis of privacy, there is no authority that this type of information is within any constitutional zone of privacy, which have thus far been limited to activities relating to marriage, procreation, contraception, family relationships, child rearing and education. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 679 (Tex. 1976). See Open Records Decision No. 201 (1978). The common law right of privacy as described by the Texas Supreme Court in the Industrial Foundation case, supra, is similar to the right protected in section 3(a)(2). The common law test asks whether there is an "unwarranted invasion" while the section 3(a)(2) standard is arguably more stringent, in that it required a "clearly unwarranted invasion." The difference, if any, would require the public's interest to be given greater weight in a case where a public employee's privacy interest is affected than where a private citizen's privacy is at stake. However, in this case, we believe the result would be the same under either test. See Open Records Decision Nos. 220, 219 (1978).

It is our decision that the information requested is not excepted under section 3(a)(1) or 3(a)(2) of the Texas Open Records Act, and is therefore public and must be disclosed.

Very truly yours,



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